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No. 81-2384

In the Supreme Court of the United States

October Term, 1981

GENERAL LONGSHORE WORKERS, ILA
LOCALS 1418 and 1419,
Petitioners,

vs.

FALLON W. BENTZ, Acting Regional Director of the Fifteenth Region of the NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

GREAT SOUTHERN, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT PANAMA CITY PORT AUTHORITY IN OPPOSITION

ALLEY AND ALLEY, CHARTERED
JOHN-EDWARD ALLEY
(Counsel of Record for the Firm)
ROBERT D. HALL, JR.
MICHAEL R. MILLER
205 Brush Street
P.O. Box 1427
Tampa, Florida 33601
(813) 229-6481
Counsel for Respondent Panama City Port Authority

R. L. Myers Printing, Inc., 916 Cherry Street, Kansas City, Mo. 64106, (816) 421-8000

QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals err when it affirmed, per curiam, the District Court's order for the distribution of funds impounded in the Court's equitable jurisdiction in a manner consistent with an NLRB order, so as not to give full force and effect to, or allow the Unions to benefit from, a contractual arrangement previously determined to be illegal and enjoined by both the Court and the NLRB?

PARTIES TO THE PROCEEDINGS BELOW

Fallon W. Bentz, Acting Regional Director, Region 15, National Labor Relations Board

General Longshore Workers, ILA Local Nos. 1418 and 1419 (now merged—Local 3000)

New Orleans Steamship Association
Panama City Port Authority
Great Southern Paper Company
Pioneer Shipping and Forwarding Company, Limited
International Navigation, Limited
Central Gulf Lines, Inc.
Lykes Brothers Steamship Company, Inc.
Combi Lines
Waterman Steamship Corporation
NOSSA—ILA Royalty Escrow Account
Alley and Alley, Chartered
Sale, Bryant, Thompson and Kurvin, Chartered

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COUNTER-STATEMENT OF THE CASE

A re-statement of the case is necessary due to omissions in the statement of the Petitioners (hereafter "Unions"). The Unions' statement of the case contains, and its petition is entirely premised upon, characterizations as to matters taken out of context from a decision of the National Labor Relations Board ("NLRB") which characterizations are inconsistent with that decision when viewed as a whole and which characterizations were re-

jected below by the District Court, by a unanimous Fifth Circuit Court of Appeals' panel, and by the NLRB General Counsel on behalf of the NLRB. The Unions' statement also fails to discuss significant facts as to certain claimants (Florida shippers) involved, the nature of their interests, the nature and timing of their participation (or lack thereof in the NLRB and District Court proceedings) and the nature of their uncontradicted, adjudicated interests.

The Charge of Illegality and Injunctive Proceeding

This litigation was instituted in April 1975 when this Respondent, Panama City Port Authority ("Port Authority"), filed charges against the Unions with the National Labor Relations Board ("NLRB"). The charges included the charge that the Unions were violating Section 8(e) of the National Labor Relations Act ("Act"), 29 USC Section 158(e), in that the Unions had entered into contracts or agreements with the New Orleans Steamship Association ("NOSSA") whereby NOSSA employer members had ceased or refrained from, or agreed to cease or refrain from, doing business with Florida shippers utilizing the Panama City Port unless a $2.00 per ton royalty was paid on certain shipments.

The litigation in the U.S. District Court was instituted in October 1975 when Fallon W. Bentz, Acting Regional Director, on behalf of the NLRB, petitioned the U.S. District Court for injunctive relief stating that he had found reasonable cause to believe that the Port Authority's charges were true. On March 15, 1976, the U.S. District Court enjoined the Unions from enforcing the illegal financial penalty with regard to barges emanating from Panama City and passing through the Port of New Orleans (Unions'

Appendix, "App.", G). Following the Court's injunctive order, both the Unions and NOSSA made a request to have the royalty payments paid into the Court's registry in lieu of an injunction. Regarding this procedure, the Unions represented to the Court that:

> If the Unions do not prevail, the money can be returned with interest to those who have paid it. Everyone is protected and there can be no chance of injustice.

Subsequently, on June 28, 1976, the Court modified its injunction to require that the royalties be paid into the registry of the Court pending final determination of the matter by the NLRB (App. F) which was then considering the merits of the unfair labor practice charges filed by the Port Authority.

The Administrative Finding That the Actions of the Unions Until Enjoined Were Illegal

Following the Court's injunctive hearings, the parties (i.e., the NLRB General Counsel, the Unions, NOSSA and the Port Authority) entered into a stipulation whereby the unfair labor practice charge came on for determination before an administrative law judge based upon a stipulated record.[1] In September 1977, a decision was rendered by an administrative law judge holding that by enforcing the lighter royalty provision, the Unions had engaged in unfair labor practices affecting commerce within the meaning of 29 USC Section 158(e). The administrative law judge found that it was of "no exculpatory significance" that NOSSA, for its New Orleans employer members, vol-

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1. The Unions' impoundment representations were not presented or discussed in the NLRB proceeding. The impoundment and the specific impoundment accounting were exclusively handled by the District Court.

untarily agreed to the penalty provision because the public policy behind Section 8(e) is concerned with "all other persons who might be affected by such an agreement", noting that where the cost of the penalty was "passed along" to shippers (as here), it constituted a financial deterrent to doing business at a non-ILA port such as Panama City.

The administrative law judge recognized, based upon the stipulation of the parties, that the Unions had been able to give "full force and effect" to the provision from October 1, 1974 only "until enjoined." In finding the Unions' actions to be illegal and in violation of Section 8(e) of the Act, the administrative law judge's actual holding was:

> It follows that Respondents have violated Section 8(e) of the Act by their conduct in maintaining and giving full force and effect to the agreement *until enjoined* from further doing so by the Court's order in the Section 10(l) injunction proceeding. . . . [Emphasis added]

Accordingly, the administrative law judge in 1977 plainly found that the District Court through its 1976 orders had prevented the Unions from continuing what had been their illegal course of conduct since 1974.

The NLRB Order of Continuing Injunctive Relief

Turning to the issue of relief, the administrative law judge recommended that the District Court's injunctive order be transformed into a permanent injunction requiring the Unions to "[c]ease and desist from maintaining, giving effect to, enforcing or reaffirming" the illegal provisions. While the Unions rely heavily here on one sentence taken from a footnote in the decision of the administrative

law judge regarding "reimbursement," their citation to that footnote is out of context and their reliance misplaced. The cited footnote language referred to a short request of the NLRB General Counsel at the close of his brief. The "reimbursement" request was for an order for reimbursement to the "original payor" of monies paid "as royalty pursuant to the illegal lighter royalty provisions" commencing six months prior to filing of the 1975 charges (i.e., in October 1974—18 months prior to the injunction) pursuant to Section 10(b) of the Act. The administrative law judge, as aforementioned, viewed the illegal effect of the agreement as having been terminated by the injunction; he also viewed the request for administrative reimbursement of monies paid "as royalties pursuant to" the contract to the "original payor" to relate only to NOSSA members who were party to the Unions' New Orleans contract containing the illegal provisions. Thus, the cited footnote made no reference to impounded monies or to interests of members of the public such as the Florida shippers who were not NOSSA members and not parties to the NLRB proceeding but who proved in court that the bulk of the payments were being "passed along" to them.[2]

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2. The administrative law judge stated in pertinent part in the footnote cited by the Unions:

> The General Counsel requests an affirmative order requiring reimbursement to the "original payor" of money paid as royalties pursuant to the lighter royalty provision of the NOSSA-ILA contract. The "original payor", I take it, refers to the stevedoring and shipping companies who were liable for such payments under the contract which NOSSA executed on their behalf with Respondents. As the royalties paid by these employers were not involuntarily exacted from them by unlawful means but were sanctioned by the contract to which they voluntarily agreed, I deem it inappropriate to grant the General Counsel's request. . . .

Notably, the authority relied upon by the administrative law judge for the denial of an order requiring administrative reimbursement of illegal collections to NOSSA members had been rejected on that very point. *See Acco Construction Equipment, Inc. v. NLRB*, 511 F.2d 848 (9th Cir. 1975), *rev'g in part* 204 NLRB 742 (1973).

The NLRB in 1978 adopted the administrative law judge's decision without comment.[3] The Unions did not appeal that order.

Ancillary Proceedings for Distribution of the Funds

Proceedings were again instituted before the District Court and, at the outset, the Port Authority filed a claim stating that the Court sat as statutory trustee holding the money deposited in the registry for the rightful owners and that the rightful owners were those who bore the burden of the payments including the Florida shippers to whom the cost of the penalty had been passed along. Shortly thereafter, Great Southern Paper Company ("Great Southern"), and International Navigation Ltd. ("INL") sought to intervene and filed claims on the impounded money. Their claims stated that the illegal royalty cost had been "passed on" by the NOSSA members in New Orleans to these Florida shippers. These claimants claimed the majority of the money impounded and their claims were ultimately established before the Court below.

After permitting the foregoing claimants and others to intervene to assert a claim as to the funds in the reg-

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3. Because the administrative law judge had not spoken regarding the distribution of the impounded monies, the Port Authority requested through exceptions to his order that the NLRB take "administrative notice" of the amounts impounded and to further note that "NOSSA members [had] passed along the $2.00 per ton royalty to other employers such as Great Southern," a Florida shipper. NOSSA contended that that "pass along" question was "not properly before the Board." The NLRB itself, on review, did not indicate to what extent, if any, that administrative notice of the status of the Court impoundment proceeding or a statement by the NLRB as to distribution of the impounded monies would be appropriate. When this failure to provide for the disposition of impounded monies was noted again in a motion for clarification, the motion was denied.

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istry of the Court, and after considering the briefs and positions of all the parties, the District Court entered an order on April 6, 1979 which vacated the 1976 injunction order (as modified for impoundment) and provided for the commencement of ancillary proceedings to disburse the funds in the Court's registry (App. E). The District Court found that the injunction had been modified to impound the funds into the Court's registry in response to "urgings of NOSSA and the Unions" and that the impoundment was "an exercise of the Court's equitable powers to protect the interests of all parties, pending the Board's adjudication." The Court noted that at the time of the impoundment order, both NOSSA and the Unions had asserted "that in the event the Board found the royalty unlawful, the funds should be returned to those who paid them." The Court concluded that "[e]quity demands nothing less." The Court ordered the funds to be returned to those who incurred the expense, finding no conflict with the NLRB order in this regard. The Court referred the case to the United States Magistrate to serve as special master to conduct further proceedings with respect to the determination of the persons who incurred the expense of the royalty, the amount thereof as to each person, and to file a report and recommendation with respect thereto.

After publication of notice, discovery proceedings and audit proceedings, the U.S. Magistrate issued a special master finding and recommendation (App. D). Regarding the funds paid into the Court's registry, the Magistrate found that the majority of the funds paid in were "attributable and should be disbursed to" the Florida shippers. Neither the NLRB nor any claimant maintained an objection to the Magistrate's' findings as to disbursements. Accordingly, judgment was entered upon the schedule of distribution set forth by the Magistrate which judgment was

unobjected to by the claimants and the NLRB (App. B and C). From this judgment, the Unions have appealed. The Unions have raised no opposition to the specific distributions to the specific parties but rather contest only the right of any party other than the Unions to recover anything from the fund. The Unions' appeal to the Fifth Circuit Court of Appeal was opposed by the NLRB General Counsel on behalf of the NLRB on the ground that the Court's order was just and proper and consistent with the NLRB order and the appeal was rejected with the Court of Appeals entering a unanimous *per curiam* affirmance (App. A). Following the affirmance by the Court of Appeals, the District Court distributed the impounded monies to those determined to have borne the burden, thereby completing the equitable process which had been commenced by the Court's 1976 injunction order.

SUMMARY OF ARGUMENT

The order below of the District Court distributing impounded monies was consistent with and not in conflict with the NLRB's order permanently enjoining the violation and was affirmed by a unanimous Court of Appeals' panel without opinion due to a lack of error and precedential value. The Court's order was both fair and accurate and did not award affirmative relief, but rather served traditional considerations by restoring the status quo and promptly eliminating commerce obstructions. This case, which deals with a court's return to the rightful owners of enjoined and impounded payments, does not raise an important federal question and is not closely related to a pending case that deals with review of an administrative agency's remedies for pre-injunction payments.

REASONS FOR NOT GRANTING THE WRIT

I. THIS CASE DOES NOT INVOLVE AN IMPORTANT FEDERAL QUESTION WHICH SHOULD BE DECIDED BY THIS COURT

The petitioning Unions contend that this case presents an important question concerning the relationship between a district court's authority to grant relief under Section 10(l) of the Act and the NLRB's authority to determine the appropriate remedy for unfair labor practices. This argument is premised on the Unions' argument that when the Court ordered "reimbursement" of the funds impounded, the "effect of the district court's ruling was to award permanent affirmative relief to those who had paid the royalties notwithstanding that the NLRB had *denied the same relief* which the district court awarded" (Petition at 6-7, emphasis added). As shown in the foregoing Statement of the Case, this was viewed below as an erroneous characterization of the NLRB order, by the NLRB General Counsel on behalf of the NLRB and by the District Court, which was affirmed by a unanimous Court of Appeals' panel below. The Court of Appeals' decision was a *per curiam* affirmance without opinion which, pursuant to Local Rule 21, cited therein (App. A), reflected a unanimous determination of no error of law and that an opinion would have "no precedential value." Notably, the Unions have cited to no pending cases and to no cases in over 20 years of enforcement in which a similar issue of a purported conflict between a district court injunction and an NLRB order confirming and permanently enjoining a violation has ever arisen. What the Unions present is plainly an issue evolving from the Unions' self-serving construction of a footnote in an administrative

order in a manner consistent with only their private interests, which construction was concurrently rejected by the lower courts and the agents charged with enforcement of the Act.

To distribute the impounded royalties as the Unions contend would make a mockery of the judicial and NLRB proceeding. The District Court originally, in 1976, found the evidence sufficient to enjoin the enforcement of the illegal royalty provision and the propriety of that determination was later confirmed by the NLRB in 1978. The administrative law judge's order found that the Unions committed unfair labor practices "until enjoined" and the one sentence from a footnote cited by the Unions plainly did not purport to require the Court to make a disposition so as to give full force and effect to the illegal royalty provision. The order, when viewed as a whole, recognized that the District Court's equitable processes had prevented the Unions from giving full force and effect to the illegal provisions and accomplishing their unlawful objectives as to certain of the royalties and the administrative order permanently prohibited the Unions from that date on from maintaining or giving effect to or reaffirming the illegal provisions. The brief reference to administrative "reimbursement" in a footnote did not refer to impounded monies which had been equitably prevented from traveling their illegal course.

Accordingly, the District Court was correct when it held that it did not construe the administrative law judge's footnote as being applicable to the funds in the Court's registry. The Court of Appeals was also correct when it affirmed that order *per curiam* and held that the appeal did not even merit an opinion. The distribution of the funds to those who bore their expense during the litigation

was not an award of "permanent affirmative relief"; rather, it was simply a completion of the original standard Section 10(l) injunction designed to restore the status quo. As the Unions' own cited authority states, "restoration of the status quo" is an appropriate and basic consideration to a district court's function of providing temporary relief. See *NLRB v. Aerovox Corp.*, 389 F.2d 475 (4th Cir. 1967); *Minn. Mining & Mfg. Co. v. Meter*, 385 F.2d 265 (8th Cir. 1967); *Angle v. Sacks*, 382 F.2d 655 (10th Cir. 1967) (cited by Unions, Petit. at 8). The decisions of the courts below effectuated public policy by restoring the status quo and thereby adhering to the strong Section 10(l) policy of injunctive relief to assure "the prompt elimination of the obstructions to the free flow of commerce." 1 Legis. His. of LMRA at 433 (cited by Unions, Petit. at 7).

The Unions nevertheless seek to suggest that this case involves an important intrusion into the NLRB's jurisdiction in conflict with the NLRB's order, which as shown above is not the case. The Unions' reliance on *Sears, Roebuck and Co. v. Carpet, Linoleum, Soft Tile Layers, Local No. 419*, 397 U.S. 655 (1970), is misplaced. From *Sears*, the Unions ultimately argue that the District Court "should have held the funds in its registry *solely* for the purpose of ensuring that those funds were available to be distributed in accordance with the mandate of the NLRB" (Petition at 9). It is submitted, first, that the Court did distribute the funds in accordance with the NLRB mandate. The mandate of the NLRB was that the Unions had engaged in illegal practices until the District Court enjoined and began to impound the royalties and that the Unions should continue to cease and desist from giving force or effect to or reaffirming the royalty provisions. The decision of the District Court and the per curiam affirmance by the Court of Appeals below are consistent with the NLRB order.

Second, consistent with *Sears*, the District Court did dissolve its Section 10(l) injunction/impoundment order as expired and moot upon notice from the NLRB of its entry of a permanent injunction (App. E). The distribution of the funds already impounded in an ancillary proceeding to restore the status quo and to resolve conflicting claims from numerous parties obviously remained, however. It is a well settled rule of federal practice and equity that where a federal court takes custody and control of property, the court may, irrespective of the other elements of federal jurisdiction, entertain proceedings in which members of the public claiming interest in the property may protect and enforce their claims, which proceedings are considered "ancillary" in nature. See, e.g., *Hoffman v. McClelland*, 264 U.S. 552 (1924); *State of Oklahoma v. State of Texas*, 258 U.S. 574 (1922). Where a fund of money is impounded pursuant to a federal court order requiring that certain allegedly illegal payments be paid into the Court's registry until resolution of litigation, the money is impounded as a result of the exercise of the Court's equitable jurisdiction and the fund is also to be distributed through the exercise of the Court's equitable jurisdiction including appropriate orders to effect distribution to the payors of the illegal charge. See, e.g., *Washington Gas Light Co. v. Baker*, 195 F.2d 29 (D.C. Cir. 1951). Impounded money is considered a deposit *in custodia legis* and is held by the Court in trust for the benefit of whomever it is found to belong and the Court assumes the duty to make the disposition of the fund in ancillary proceedings in conformity with equitable principles. See *Branch v. United States*, 100 U.S. 673 (1879); *Mid-Jersey National Bank v. Fidelity-Mortgage Investors*, 518 F.2d 640, 643 (3d Cir. 1975); *Baxter v. United Forest Products Co.*, 406 F.2d 1120, 1126 (8th Cir. 1969). The distribution proceeding below was "ancillary" to the Section 10(l)

proceeding and the distribution order totally consistent with both equitable principles and the NLRB's order.

Faced with the obvious equity of the Court's decision and lack of pending or past cases suggesting that this case raises an important issue, the Unions finally suggest (Petit. at 11) that Section 10(l) cases are often rendered moot by intervening events citing *McLeod v. General Electric Co.*, 87 S.Ct. 5 (1966), and argue that this case presents "an appropriate vehicle" to review unspecified Section 10(l) issues. There, of course, has never been any issue whatsoever regarding the 1976 Section 10(l) injunction or the standards involved in its issuance raised here. The Section 10(l) proceeding and injunction were entirely proper and were ratified by the NLRB and the Unions have never challenged that determination. This entire appeal turns on facts peculiar to this particular case as resolved in a distribution proceeding ancillary to the original Section 10(l) case and does not provide "a vehicle" for the review of any meaningful Section 10(l) issues. The case presents the Unions' construction of a footnote in an administrative opinion in a fashion consistent with only their private interests and not a question of past, present or future importance to the administration of the Act.

II. THIS CASE IS NOT CLOSELY RELATED OR SIMILAR TO A CASE PRESENTLY BEFORE THE COURT

The Unions erroneously contend that this case is closely related to the case of *Shepard v. NLRB*, No. 81-1627, as to which this Court granted a writ of certiorari. What is in issue in *Shepard* (i.e., the need for administrative reimbursement of pre-injunction payments held by the union), however, is exactly what is *not* an issue here.

And, what is in issue here (i.e., the Unions' nonentitlement to equitably prevented payments) is taken for granted and conceded in *Shepard*. As stated at the outset of Petitioner Shepard's argument in his brief (p. 14), the issue there is as follows:

> The petitioner challenges the Board's denial of a "make-whole" remedy. A reimbursement (make-whole) order would have required the Union and the Contractor Associations to reimburse him for the initiation fees, dues and fringe benefit contributions he was required to pay *when they enforced their illegal hot cargo agreement*. (Emphasis added)

In *Shepard*, there were two "funds" of payments—those illegally enforced (which Shepard seeks "reimbursement" of) and those which after the filing of unfair labor practice charges were equitably prevented by the District Court. As reflected at page 10 of Petitioner Shepard's brief:

> Additionally pursuant to Section 10(l) of the Act, the Board sought and obtained a federal court injunction prohibiting further enforcement of the challenged provisions . . . *Johanson v. Building Material and Dump Truck Drivers, Teamsters Local 36*, Southern District of California, Case No. 79-0086-E.
>
> *Finally, eight months after the petitioner filed his unfair labor practice charges, he was free to cease paying dues and fringe benefits to the Union*. . . [Emphasis added].

Thus what is in issue in *Shepard* is whether there should be NLRB administrative proceedings for reimbursement to employers of *pre*-injunction payments illegally collected by the union when it was able to give full force

and effect to the illegal provision. What is in issue here are solely those payments which were equitably prevented from traveling their illegal course by the District Court. This case involves no question of judicial restrictions to NLRB remedial discretion since the NLRB has not here or otherwise, when confirming a district court's initial Section 10(l) determination of illegality, purported to reward wrongdoing unions by requiring those members of the public protected by the District Court's equitable processes to pay over illegal penalties. Clearly, the Unions seek to reap not only the benefits of their illegal agreement during the pre-injunction period when they enforced their illegal agreement (which is objected to in *Shepard*), but also seek to reap the benefits of their illegal agreement during a period in which they were prevented by the Court from accomplishing their unlawful objectives by requiring the courts to become a party to the arrangement and to give full force and effect to the established, illegal arrangement. This argument goes well beyond what is in issue in *Shepard* and would make a mockery of the Act.

As stated by the Unions, there exists an obvious need for uniform administration of the Act. The result in this case is entirely uniform with other cases in that the Unions, upon an NLRB determination of their illegal actions, have not been allowed to accomplish unlawful objectives through royalties equitably prevented by a district court under Section 10(l). Allowing the Unions to claim the impounded payments as spoils of their illegal actions would destroy the purpose behind Section 10(l) of promptly eliminating commerce obstructions and would cause chaos to the law in general. Those who bore the burden of the impounded payments and have finally benefitted by the Court's return of the equitably collected payments should

not now be required to make penalty payments as a reward to the Unions for their wrongdoing established over six years ago.

III. MATTERS RELATING TO IMPOUNDMENT AND DISTRIBUTION WERE HANDLED EXCLUSIVELY BY THE COURT AND THE DISTRIBUTION ORDERED BY THE COURTS BELOW WAS BOTH ACCURATE AND FAIR

Moreover, assuming, *arguendo*, as the Unions contend that the effect of the District Court's ruling was to award permanent affirmative relief to those who had paid the royalty which thereby conflicted with an NLRB order denying the same relief (which it did not), it is established that there remains no equitable basis whatsoever for making an award of the type sought by the Unions here. In *Inland Steel Co. v. United States*, 306 U.S. 153 (1939), this Court established that a federal court having lawful control of a fund was under a duty to distribute the fund so that the wrongdoer would not be a beneficiary of unlawful payments. There, following an administrative (ICC) determination that certain charges imposed on and paid by a railroad were unlawful, the agency issued a cease and desist order and, pending review of that order, the payments by the railroad were impounded to a separate account. However, while the administrative order was ultimately sustained, the agency in the interim entered a separate order postponing the effect of the cease and desist order by nearly two years. The parties charging the illegal charges claimed that the funds impounded during that period should be paid over to them because there was no operative agency order forbidding the unlawful payments during that period. This Court rejected that contention, holding that restitution should be made to the

rightful claimants even in the absence of any administrative order requiring such payment and even in the face of a clear administrative order postponing the cease and desist requirement. The Court emphasized that the practice had been found to be unlawful and contrary to the public's interest, which led to the equitable impoundment, which finding of illegality was ultimately approved. The Court concluded that even if postponement of the cease and desist portion of the order were operative, the initial finding of unlawfulness was left intact throughout and that in those circumstances "equity and good conscience" required retention of the money by the railroad.

The District Court in impounding illegal charges assumed and properly exercised its duty of making an accurate distribution in accord with equitable principles after detailed proceedings exclusively before it.[4] The finding of illegality has been intact since March 1976 and the purpose of Section 10(l) of promptly eliminating commerce obstructions, as well as equity and good conscience, support the distribution order.

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4. Here, claims on the monies were litigated only before the District Court. The NLRB conducted no proceedings to examine specific claims on any monies. Thus, there were numerous matters including the Unions' original 1976 representations regarding impoundment, the specific impoundment accounting, and the uncontradicted evidence of numerous "pass-along" interests which were not present or discussed in the NLRB proceedings. The Court's impoundment and distribution processes were detailed and resulted in the resolution, without objection, of numerous conflicting claims. The resolution was both fair and highly accurate.

CONCLUSION

For the reasons set forth above, Respondents pray that the Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit be denied.

Respectfully submitted,

ALLEY AND ALLEY, CHARTERED
JOHN-EDWARD ALLEY
(Counsel of Record for the Firm)
ROBERT D. HALL, JR.
MICHAEL R. MILLER
205 Brush Street
P.O. Box 1427
Tampa, Florida 33601
(813) 229-6481
Counsel for Respondent Panama City Port Authority